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TRAINING AND ASSISTANCE

Note by the Secretariat

1. Since the Commission noted at its twentieth session in 1987 "that training and assistance was an important activity of the Commission and should be given a higher priority than it had in the past", 1/ the Secretariat has endeavoured to plan a more extensive programme of activities than had been previously carried out. This note will describe the developments during the last two years and discuss possibilities for the future.

I. SEMINAR HELD IN LESOTHO

2. The Regional Seminar on International Trade Law, about which the Secretariat reported to the Commission at its twenty-first session, was held in Maseru, Lesotho from 25 to 30 July 1988. The Seminar was hosted by the Kingdom of Lesotho and was co-sponsored by the Preferential Trade Area for Eastern and Southern African States (PTA), a regional organization with a membership of 15 States and open to five more countries of the region. Financing was provided by contributions from Denmark, Finland, Netherlands, Norway, Sweden and the United States of America.

3. A total of 34 participants, amongst whom were senior government officials, representatives from chambers of industry and commerce and from the universities, came to Maseru from twelve member States of PTA and two States eligible for membership: Burundi, Djibuti, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Mozambique, Rwanda, Swaziland, Uganda, United Republic of Tanzania, Zambia and Zimbabwe. An additional 36 persons from Lesotho participated in the Seminar.

1/ Report of the United Nations Commission or International Trade Law on the work of its twentieth session, Official Records of the General Assembly, Forty-second Session, Supplement No. 17 (A/42/17), para. 335.

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4. The primary purpose of the Seminar was to acquaint decision makers with UNCITRAL as an institution and with the legal texts that have emanated from its work and to promote the adoption and use of those texts. Lectures were given by members of the UNCITRAL Secretariat, by Professor Joko-Smart of Sierra Leone, Chairman of the twenty-first session of the Commission, and by Mr. Sevon of Finland, Chairman of the Working Group on the New International Economic Order throughout the period of preparation of the UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works.

5. A second purpose of the Seminar was to permit a discussion of certain developments in international trade law that were already taking place within the context of PTA. Lectures were given by members of the PTA Secretariat on the plans for a PTA arbitration centre and the current state of the law governing arbitration in the region and on the PTA Payments Arrangement (a scheme for multi-lateral clearing of intra-PTA trade balances using a PTA unit of account equal in value to the SDR).

6. While all presentations on the UNCITRAL texts were well received by the participants, the discussions on the Legal Guide and on international commercial arbitration deserve to be mentioned specially.

7. The participants were very appreciative of the Legal Guide as a reference document for use in the negotiation of international construction contracts, as well as for many other types of long-term contracts. Examples were given where use of the Legal Guide had already been of benefit to parties from developing countries in the negotiation of such contracts. It was stated in the closing ceremonies that the Legal Guide was one of the most useful results of the work of the United Nations in respect of the new international economic order. As a result of requests from participants and from those who learned of the Legal Guide from participants, a number of copies have been distributed to individuals and offices in the PTA countries who are involved in the negotiation of such international contracts.

8. In respect of international commercial arbitration, on 21 November 1987 the PTA Federation of Chambers of Commerce and Industry had established a PTA Centre for Commercial Arbitration in Djibouti, which was not yet operational at the time of the Seminar. A decision had already been made to use the UNCITRAL Arbitration Rules and the UNCITRAL Conciliation Rules as the procedural rules of the Centre. There was considerable discussion in the Seminar about the national arbitration laws of the PTA States in the context of international commercial arbitration. It was noted that the law on recognition and enforcement of awards was fragmented with only a very few States being parties to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

9. At the conclusion of the discussion the prevailing view was that the PTA States should adopt the 1958 New York Convention rather than prepare a special instrument for the region, which was the alternative under consideration by the PTA Federation of Chambers of Commerce and Industry. At a meeting in Lusaka, Zambia (19-20 August 1988), in which several participants from the Seminar participated, the Council of the Federation decided to recommend to its General Assembly that the States in the region adopt the 1958 New York Convention.

10. The Seminar was discussed at the first meeting of the PTA Committee of Legal Experts held in Lusaka, Zambia from 6 to 8 October 1988. The Committee concluded that "Considering the relevance of these texts to the success of the PTA economic arrangement, the PTA Member States should be urged to consider and possibly adopt these texts", i.e. the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules), Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), UNCITRAL Model Law on International Commercial Arbitration (1985), United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) and the Convention on the Limitation Period in the International Sale of Goods (New York, 1974). 2/ The report of the Seminar was noted by the PTA Council of Ministers at its thirteenth meeting held in Arusha, Tanzania from 26 to 29 November 1988. The Council also noted "that the most important aspect of the Seminar was that the participants appreciated that the adoption by Member States of the UNCITRAL legal texts would contribute to the objectives of the PTA because they were intended to minimize discrepancies in existing national legislations. Council was informed that the participants would recommend to their governments that they adopt the different UNCITRAL texts". 3/

11. The UNCITRAL Secretariat has remained in close contact with the PTA Secretariat and with participants from the Seminar. Missions are scheduled to these countries in order to maintain the momentum generated towards adoption of the texts that have emanated from the work of the Commission.

II. THIRD UNCITRAL SYMPOSIUM

12. As announced to the twenty-first session of the Commission, the Third UNCITRAL Symposium on International Trade Law will be held in conjunction with the twenty-second session of the Commission during the week of 22 to 26 May 1989. The planning for the Symposium is based on the Symposium held in 1981. In addition to members of the Secretariat, delegates and observers to the Commission will be invited to give lectures on topics relevant to the Commission and to its programme of work. Fellowships will be made available to the extent of available funds to young lawyers and scholars from developing countries. Additional qualified participants will be accepted to the limit of available space. During the twenty-second session the Secretariat will report further to the Commission on the results of the Symposium.

III. POSSIBLE FUTURE ACTIVITIES

13. Preliminary discussions have been undertaken about the possible sponsorship in 1990 of a seminar on international trade law for participants from developing countries to be financed from a special trust fund established by a member State with the United Nations Development Programme. The discussions are still at an early stage and no firm commitments have been made.

2/ Report of the first meeting of the Committee of Legal Experts, PTA/TC/LEG/I/9, para. 66.

3/ Report of the thirteenth meeting of the Council of Ministers, PTA/CM/XIII/5, paras. 347-348.

14. Following the success of the Seminar in Lesotho and the expectation that it will lead to the adoption and use of the texts prepared by the Commission in a number of States in the region, the Secretariat would wish to sponsor further regional seminars in co-operation, where possible, with regional economic organizations. Contacts have been initiated with several such organizations and the Secretariat hopes to be able to report more definitive plans at the twenty-second session.

IV. FINANCIAL AND ADMINISTRATIVE CONSIDERATIONS

15. Planning for a continuing programme of training and assistance continues to be hampered by a lack of assured administrative and financial resources. In regard to the administrative resources, the work must be undertaken by the staff of the Commission's Secretariat in addition to its other activities servicing the Commission. This places a limit on the amount of training and assistance activities that can be undertaken. The work involved in planning a seminar away from Vienna is more extensive than planning one in Vienna. This in itself is one important reason for undertaking such seminars in co-operation with regional economic organizations. The major portion of the administrative work involved in organizing the Seminar in Lesotho was undertaken by the PTA Secretariat.

16. Although the Seminar in Lesotho was a success once held, it was uncertain until the last minute whether there would be sufficient funds for holding the Seminar. The final contribution that permitted the Seminar to take place became firm ten days before the Seminar opened. This left barely enough time to arrange for the issuance of air tickets to the participants.

17. Financial planning for a symposium for young lawyers and scholars to be held in conjunction with a session of the Commission in Vienna is less restrictive than is the financial planning for a regional seminar to be held away from Vienna. In the former case the only expenditure of funds is for the travel of the participants, and fellowships are awarded only to the level of available funding at the cut-off date. Regional seminars organized by the Commission's Secretariat require a certain amount of fixed expense and, if the seminar is for the major purpose of promoting adoption and use of the UNCITRAL texts, it would be self-defeating to deny funding at the last minute to individuals who had been solicited as participants because of the role they might play in the decision of their country to adhere to one of the texts. Regional seminars organized by other organizations that are co-sponsored by the Commission's Secretariat normally entail little or no expense, but their occurrence, especially in developing countries, and their value to the programme of the Commission are less dependable.

18. Since there are no funds available to the Secretariat from the regular budget for training and assistance activities, whether in order to train young lawyers and scholars or to promote adoption of the UNCITRAL texts, funding must be met from voluntary contributions to the Trust Fund for UNCITRAL Symposia. In order to provide a more regular flow of funds and to ease the difficulties of financial planning that occur when contributions are made for a specific event from multiple sources, at its twenty-first session in 1988 the Commission decided to invite Governments, the relevant United Nations organs, organizations, institutions and individuals to make voluntary contributions on an annual basis to the existing Trust Fund (A/43/17, para. 97).

19. The invitation of the Commission that contributions be made to the Trust Fund on an annual basis, along with an earlier similar invitation of the General Assembly in paragraph 5 of resolution 42/152 of 7 December 1987, was transmitted to all States by note verbale on 25 August 1988. To date, no State has responded positively to this invitation.

20. Several States have indicated that they will contribute to the Symposium to be held in conjunction with the twenty-second session of the Commission. Although additional contributions will be necessary to fully fund the Symposium, a sufficient number of fellowships should be available to guarantee that it can be carried out.

21. The Commission may wish to consider further the nature of the programme of training and assistance it would wish the Secretariat to carry out and the means that might be taken to put the programme on a more secure financial basis than it is on at present.